

REMARKS/ARGUMENTS

This Response is submitted in response to the Final Office Action mailed on March 30, 2003.

The Final Office Action rejects Claims 1-5, 9-15, 17, 18, 21-24, and 26 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,753,805 (“*Cherukuri*”) and further rejects Claims 6, 7, and 25 under 35 U.S.C. §103(a) as being unpatentable over *Cherukuri*. In addition, Claims 8, 16, 19, and 20 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Cherukuri* in view of U.S. Patent No. 5,318,784 (“*Ream*”). Finally, Claims 1-26 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Ream* in view *Cherukuri* or U.S. Patent No. 6,322,828 (“*Athanikar*”). In response, Claims 1, 12, and 15 have been amended. Applicants respectfully submit that all of the above-mentioned rejections have been overcome or are improper for reasons set forth below.

The present invention, as now claimed, provides a tableted chewing gum composition and methods of producing the same. The chewing gum composition includes a gum component including one or more rectangular shaped gum chips, and a tableting media, wherein the tableting media has an average particle size that is smaller in size than the average particle size of the gum chips. The resulting tableted gum demonstrates a non-homogeneous distribution of the gum component and the tableting media. The claims have been amended in order to distinguish the presently claimed gum chips from the granules disclosed in *Cherukuri*.

The method for forming the chewing gum composition includes the steps of providing a gum component; processing the gum component to form one or more rectangular shaped gum chips; mixing the gum chips with a tableting media to form a non-homogeneous distribution of the gum component and the tableting media; and processing the mixture of gum chips and tableting media to form the tableted gum, wherein the tableting media has an average particle size that is smaller in size than the average particle size of the gum chips. Support for the amendments may be found on page 6, lines 11-33 of the Application, thus no new matter has been added. Further, the amendments clearly do not present new issues requiring further consideration or search by the Patent Office. Applicants respectfully submit that each of the

cited references fails to teach or arguably suggest a number of the features of the claimed invention.

Contrary to the Patent Office's assertions, *Cherukuri* does not disclose each and every feature of the claimed invention. Indeed, "for a prior art reference to anticipate in terms of 35 U.S.C. § 102, every element of the claimed invention must be identically shown in a single reference." *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990). Applicants submit there is no teaching or suggestion relating to a tableted chewing gum composition which includes a gum component including one or more rectangular shaped gum chips, as is presently claimed. Moreover, *Cherukuri* is also completely silent as to a tableted chewing gum that demonstrates a non-homogeneous distribution of the gum component and the tableting media. Both of these above-mentioned features are specifically claimed in the invention. Further, the gum particles/granules of *Cherukuri* are not "equivalent to applicant's [sic] gum chips" because they clearly do not result in the claimed non-homogenous tableted gum. Therefore, Applicants respectfully submit that the rejection of Claims 1-5, 9-15, 17, 18, 21-24, and 26 under 35 U.S.C. §102(b) should be withdrawn.

Claims 6, 7, and 25 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Cherukuri*. As discussed in detail above, *Cherukuri* does not disclose or suggest all of the features of the claimed invention. Specifically, *Cherukuri* does not disclose the rectangular gum chips or the claimed non-homogenous tableted gum. Therefore, Applicants respectfully submit that finding the optimum amount of gum component and tableting media for the novel tableted chewing gum compositions of the present invention would clearly require more than routine experimentation by one skilled in the art. Accordingly, Applicants respectfully submit that dependent claims 6, 7, and 25 are also clearly allowable and not subject to rejection under 35 U.S.C. §103(a).

Claims 8, 16, 19, and 20 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Cherukuri* in view of *Ream*. Applicants respectfully submit that this rejection is improper.

As discussed in detail above, *Cherukuri* does not teach or suggest the present invention. Moreover, *Ream* does not remedy the deficiencies of *Cherukuri*. For example, *Ream* does not

teach or suggest a tableted chewing gum that demonstrates a non-homogeneous distribution of the gum component and the tableting media. Indeed, *Ream* does not disclose tableting a chewing gum at all. Further, there is simply no motivation to combine these two references. Accordingly, Applicants respectfully submit that this rejection of the claims has been overcome and request withdrawal of the same.

Claims 1-26 are also rejected under 35 U.S.C. §103(a) as being unpatentable over *Ream* in view of *Cherukuri* or *Athanikar*. Applicants respectfully submit that this rejection is not proper.

As discussed in detail above, *Ream* does not teach or suggest the present invention. Neither *Cherukuri* nor *Athanikar* remedy the deficiencies of *Ream*. *Anthanikar* and *Cherukuri* do not disclose or suggest a tableted chewing gum that includes rectangular shaped gum chips and demonstrates a non-homogeneous distribution of the gum component and the tableting media, in the final tableted product. As pointed out in Applicants previous response, *Anthanikar* teaches mixing an active ingredient with the powdered gum composition “prior to tablet formation to, produce a uniform and accurate mixture.” See Col. 4, lines 9-14 (emphasis added). While this point was not addressed by the Patent Office in the Final Office Action, there is no question that this clearly constitutes a teaching away from the present invention.

Cherukuri also does not disclose a tableted chewing gum that demonstrates a non-homogeneous distribution of the gum component and the tableting media or a chewing gum component which includes rectangular shaped gum chips. The Patent Office states “it would have been obvious to compress the gum composition of *Ream* into a tablet since it is old to prepare a chewing gum tablet from a chewing gum composition.,” but provides absolutely no evidence or reasoning for this blank assertion. It is established law that conclusory statements such as the one provided here are insufficient basis for maintaining an obviousness rejection. *In re Sang-Su Lee*, 277 F.3d 1338, 61 USPQ 2d 1430 (Fed. Cir. 2002).

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion or motivation to do so, either in the references themselves or in the knowledge generally available to one

ordinarily skilled in the art. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). The mere fact that the references can normally be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680 (Fed. Cir. 1990). Here, the Patent Office has not pointed to any suggestion that it would be desirable to tablet the chewing gum disclosed in *Ream* other than the fact that gum compositions in general can be tableted. As is clear from the above case law, this is insufficient. Accordingly, Applicants respectfully request that this obviousness rejection with respect to claims 1-26 be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of their patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY _____

Robert M. Barrett
Reg. No. 30,142
P.O. Box 1135
Chicago, Illinois 60690-1135
Phone: (312) 807-4204

June 20, 2003